



City of Tigard

## Tigard Workshop Meeting – Agenda

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### **TIGARD CITY COUNCIL**

**MEETING DATE AND TIME:** May 17, 2016 - 6:30 p.m.

**MEETING LOCATION:** City of Tigard - Town Hall - 13125 SW Hall Blvd., Tigard, OR 97223

### **PUBLIC NOTICE:**

Times noted are estimated.

Assistive Listening Devices are available for persons with impaired hearing and should be scheduled for Council meetings by noon on the Monday prior to the Council meeting. Please call 503-718-2419 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

Upon request, the City will also endeavor to arrange for the following services:

- Qualified sign language interpreters for persons with speech or hearing impairments; and
- Qualified bilingual interpreters.

Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 5:00 p.m. on the Thursday preceding the meeting by calling: 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

### **VIEW LIVE VIDEO STREAMING ONLINE:**

<http://live.tigard-or.gov>

Workshop meetings are cablecast on Tualatin Valley Community TV as follows:

Replay Schedule for Tigard City Council Workshop Meetings - Channel 28

- Every Sunday at 12 a.m.
- Every Monday at 1 p.m.
- Every Thursday at 12 p.m.
- Every Friday at 10:30 a.m.

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SEE ATTACHED AGENDA



City of Tigard

## Tigard Workshop Meeting – Agenda

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### TIGARD CITY COUNCIL

**MEETING DATE AND TIME:** May 17, 2016 - 6:30 p.m.

**MEETING LOCATION:** City of Tigard - Town Hall - 13125 SW Hall Blvd., Tigard, OR 97223

6:30 PM

1. WORKSHOP MEETING
  - A. Call to Order- City Council
  - B. Roll Call
  - C. Pledge of Allegiance
  - D. Call to Council and Staff for Non-Agenda Items
2. RECEIVE BRIEFING ON TIGARD'S RECREATION PROGRAM **6:35 p.m. estimated time**
3. BRIEFING ON RECREATION PROGRAM FEE ORDINANCE **6:50 p.m.estimated time**
4. BRIEFING ON AN AGREEMENT WITH TRIMET REGARDING COST SHARE OBLIGATIONS FOR NEW SIDEWALKS ALONG SW COMMERCIAL STREET AND PACIFIC HIGHWAY **7:10 p.m. estimated time**
5. DISCUSSION OF PROPOSED CODE CHANGES RELATED TO SYSTEM DEVELOPMENT CHARGES **7:20 p.m. estimated time**
  - EXECUTIVE SESSION: The Tigard City Council will go into Executive Session to discuss real property negotiations under ORS 192.660(2) (e). All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public. **8:05 p.m. estimated time**
6. NON AGENDA ITEMS
7. ADJOURNMENT **8:25 p.m. estimated time**

**AIS-2657**

**2.**

**Workshop Meeting**

**Meeting Date:** 05/17/2016

**Length (in minutes):** 15 Minutes

**Agenda Title:** Receive Briefing on Tigard's Recreation Program

**Prepared For:** Steve Martin, Public Works

**Submitted By:** Judy Lawhead,  
Public Works

**Item Type:** Update, Discussion, Direct Staff

**Meeting Type:** Council Workshop Mtg.

**Public Hearing:** No

**Publication Date:**

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**Information**

**ISSUE**

Briefing on Tigard's Recreation Program.

**STAFF RECOMMENDATION / ACTION REQUEST**

No action is requested.

**KEY FACTS AND INFORMATION SUMMARY**

Completed in 2015, the city's Recreation Program Study includes recommendations and an implementation plan for meeting the community's goals for recreation. This includes programming and services like classes, events, sports, and recreation information. The Program Study recommends the following implementation plan timeline:

- Year 1: Initial coordination, policy development and information, recreation guide start-up and printing, increase in grants, beginning of scholarship awards
- Year 2: Pilot programs and outdoor events
- Year 3: Increased grants, increased programs and outdoor events, established pilot programs for indoor events
- Year 4: Initiation of facility reservations and pilot programs for drop-in activities, increase in indoor events
- Year 5: Increase in drop-in activities

The purpose of this meeting is to provide Council an overview of the activities completed during Year 1, and also to provide an update on the activities planned for Year 2. This will include a discussion of future policies in need of Council guidance, and guidelines that are more routine in running a recreation program.

**FY 2015-2016 Accomplishments**

- Initial Coordination - Recruited and hired the city's first Recreation Program Coordinator and recreation intern.
- Policy Development – Drafted administrative procedures, fee schedule updates, event guidelines, insurance and waiver requirements, and an internal process guideline for staff to use in awarding scholarships.
- Recreation Guide - The city's first activity guide is due out in June and will cover events through the summer. Online registration will be available through ActiveNet, the city's online tool for shelter reservations and now special event and class registration.
- Grants and Scholarships – Work to implement a program by this summer.

In addition, Parks & Recreation hosted the city's first Egg Hunt and assisted with the Tigard Youth Bike Fair and Public Works Day. The Egg Hunt far surpassed staff expectations, with over 700 people in attendance.

### **FY 2016-2017 Work Plan**

- Pilot programs and outdoor events - The tentative schedule of events includes:
  - 2017 Egg Hunt
  - Public Works Day
  - Movie in the Park
  - Tigard Festival of Balloons
  - National Skateboard Day
  - Family Fest - in 2016 this event will partner with the Tigard Downtown Festival
  - Tigard dog park costume contest
  - The downtown tree lighting
- Additional tasks
  - School programs: Work with the school district and other school oriented non-profits to develop affordable before and after school programs
  - Community partnerships: Develop partnerships with community and non-profit organizations for programs, classes and facility rentals.

### **OTHER ALTERNATIVES**

n/a

### **COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

Receive Briefing on Tigard's Recreation Program Council Goal #1 is to:  
Provide Recreation Opportunities for the People of Tigard  
Establish a city recreation program in the 2015-16 budget.

Three relevant Park and Recreation Advisory Board goals are:

Guide the establishment of a citywide recreation program.

Engage other community and City organizations to drive recreation.

Explore alternative recreation programs (ie. mountain biking, NW trail lines, BMX track) and

engage advocacy groups.

## **DATES OF PREVIOUS COUNCIL CONSIDERATION**

None

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### **Attachments**

Power Point

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CITY OF TIGARD  
Respect and Care | Do the Right Thing | Get it Done



## Parks & Rec Program Update

Public Works Department | May 17, 2016

CITY OF TIGARD

### Tigard City Council's #1 Goal



#### Provide Recreation Opportunities for the People of Tigard

- ▶ Establish city recreation program in 2015–16 adopted budget:
  - » Recreation clearinghouse and program guide *(completed)*
  - » Grants and scholarships
  - » Recreation coordinator—staff position
  - » Programs and classes *(beginning year 2)*
  - » Outdoor events *(year 2)*
  - » Indoor events *(year 3)*

## CITY OF TIGARD

## Initial Coordination & Policy Development

*"Implementation "will require policy and organizational decisions to support this new area of service for the City of Tigard."*

- ▶ Administrative procedures
- ▶ Fee schedule updates
- ▶ Event guidelines
- ▶ Insurance and waiver requirements

### Meet Our Staff Anthony Markey

joined the City of Tigard as the Recreation Coordinator in December of 2015.

He has worked in Recreation and Aquatics for over 20 years. He is also a Portland State University graduate with a double major in Health & Fitness Education and Community Health



## CITY OF TIGARD

## Recreation Guide

*"...Residents need a coordinated recreation guide that notes activities, costs, schedules and registration information for programs and classes in Tigard."*

- ▶ Clearinghouse for Tigard events and activities
- ▶ Available online in June 2016
- ▶ Limited hard copies available

### Tigard Parks & Rec

ACTIVITY GUIDE | SUMMER 2016



## CITY OF TIGARD

## Grants & Scholarships

*"In order to refine the existing community grant program and implement a scholarship program for individual participants, the City will need to establish the criteria that qualify applicants and assist in decision-making when allocating resources."*

- ▶ Ordinance changes will allow the city to grant scholarships to individuals and families
- ▶ Internal process guidelines created for staff use in awarding scholarships
- ▶ Working to implement a program by this summer

## CITY OF TIGARD

## Events

*"There is a community demand for more special events—with more variation in the size and scale of the events provided."*

- ▶ **Hosted**
  - ▶ Egg Hunt
  - ▶ St. Anthony's
  - Public Works Day
- ▶ **Partnered**
  - ▶ Bike Fair
  - ▶ Public Works Day
- ▶ **Upcoming**
  - ▶ Family Fest, and more!





## CITY OF TIGARD

## Programs & Classes

*"To expand recreation programs, the City should serve as a recreation coordinator, recruiting and contracting with existing providers to offer recreation classes and programs in appropriate City parks and facilities."*

- ▶ Partnerships
- ▶ School Programs



## CITY OF TIGARD

Thank you for your time and support

Questions?



**AIS-2607**

**3.**

**Workshop Meeting**

**Meeting Date:** 05/17/2016

**Length (in minutes):** 20 Minutes

**Agenda Title:** Briefing on Recreation Program Fee Ordinance

**Prepared For:** Aaron Rivera

**Submitted By:** Judy  
Lawhead,  
Public  
Works

**Item Type:** Update, Discussion, Direct Staff  
**Meeting Type:** Council  
Workshop  
Mtg.

**Public Hearing** No

**Newspaper Legal Ad Required?:**

**Public Hearing Publication**

**Date in Newspaper:**

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**Information**

**ISSUE**

Council will hear a briefing from staff related to new fees to support the recreation program, and potential changes to the City's Fees and Charges municipal code and Master Fees and Charges Schedule related to scholarships and the authority for setting fees.

**STAFF RECOMMENDATION / ACTION REQUEST**

No action is requested; formal consideration is scheduled on a future meeting.

**KEY FACTS AND INFORMATION SUMMARY**

The new recreation program has advanced to where the City could offer classes and programs, but in order to do that will need fees established for those offerings. Staff will discuss two potential options for the Council to consider. The first option would be to create and adopt a separate ordinance for recreation program offerings. Further, that option could authorize the Public Works Director to set the program fees. The second option is to annually update the Master Fees and Charges schedule with the proposed program fees. Either option will also require changes to the City's Fees and Charges ordinance (Chapter 3.32 of the TMC); staff will go over those proposed changes in the briefing.

The 2015 Recreation Program Study recommends the city support community events and social services through grants to community groups and agencies. Specifically, the Recreation Program Study Recommends:

- Increasing grant funding (including funding to cover in-kind staff support) for recreation and events
- Creating a scholarship fund with awards by application to cover class fees and/or transportation costs for participants who cannot afford the costs

Currently, only nonprofit organizations can receive an exemption or a reduced fee. The proposed ordinance changes would allow grants and scholarships to be awarded to individuals and/or families who qualify.

## **OTHER ALTERNATIVES**

N/A

## **COUNCIL OR CCDA GOALS, POLICIES, MASTER PLANS**

Council Goal #1: Provide Recreation Opportunities for the People of Tigard. Specifically this goal calls for grants and scholarships to be established and programs and classes to be offered.

## **DATES OF PREVIOUS CONSIDERATION**

This is the first time this discussion has come before the council.

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### **Fiscal Impact**

**Cost:** 0  
**Budgeted (yes or no):** 0  
**Where Budgeted (department/program):** 270/6150

### **Additional Fiscal Notes:**

If Council passes this ordinance it will result in additional fee revenue in the General Fund, although the magnitude and timing is indeterminate at this time. Revenue is likely to be proportionate to the volume, cost, and other factors associated with programmatic offerings.

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### **Attachments**

Ordinance  
Exhibit A

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**CITY OF TIGARD, OREGON  
TIGARD CITY COUNCIL  
ORDINANCE NO. 16-**

AN ORDINANCE AMENDING TIGARD MUNICIPAL CODE CHAPTER 3.32 CITY FEES AND CHARGES TO DELEGATE FEE SETTING FOR RECREATION PROGRAMS TO THE PUBLIC WORKS DIRECTOR

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WHEREAS, the nature of providing recreation activities and coordinating program services with existing providers requires the ability of the Recreation Program Coordinator to quickly respond to customer demand; and

WHEREAS, the Tigard Municipal Code Chapter 3.32 requires Council to review and adopt rates for fees, typically done in May for the upcoming year; and

WHEREAS, the Code currently does not provide for an effective mechanism to adjust fees to target specific groups or lower income individuals; and

WHEREAS, the Code currently restricts fee exemptions to nonprofit organizations, limiting the ability to offer scholarships and other reductions to fees/charges; and

WHEREAS, the Code requires rates for fees and charges to be based solely upon the reasonably determined cost for service cost of service and does not allow for flexibility; and

WHEREAS, the 2015-2017 Tigard City Council Goals include to “Provide Recreation Opportunities for the People of Tigard;” and

WHEREAS, the MIG Recreation Program Study: Recommendations and Implementation Plan outlined a five year plan to start a recreation program including assumptions about demand-driven activities expanding yearly, coordination with existing service providers, and grants and scholarships for targeted groups; and

WHEREAS, the City Council wishes to delegate its authority to set fees and charges for the Recreation Program to the Public Works Director in order to allow for greater flexibility and further the goal of promoting recreation opportunities.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Chapter 3.32, is amended as shown in Exhibit A, (added language is shown in *italics* and deleted language in ~~striketrough~~).

SECTION 2: This ordinance shall be effective 30 days after its passage by the council, signature by the mayor, and posting by the city recorder.

PASSED: By \_\_\_\_\_ vote of all council members present after being read by number and title only, this \_\_\_\_ day of \_\_\_\_\_, 2016.

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Carol A Krager, City Recorder

APPROVED: By Tigard City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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John L. Cook, Mayor

Approved as to form:

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City Attorney

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Date

# TIGARD MUNICIPAL CODE

## Chapter 3.32 CITY FEES AND CHARGES.

### Sections:

- 3.32.010 Definitions.**
- 3.32.020 Authority.**
- 3.32.030 Method Of Determining Rates For Fees And Charges.**
- 3.32.040 Administration.**
- 3.32.050 Fee Adjustments And Schedules.**
- 3.32.060 Failure To Pay Fees And Charges.**
- 3.32.070 Exemptions.**
- 3.32.080 Ratification.**

### **3.32.010 Definitions.**

For the purposes of this chapter, the singular shall include the plural and the masculine gender shall include the feminine and neuter. As used in this chapter, unless the context otherwise requires, the following definitions shall apply:

"Fees and charges" means the following:

1. Fees and charges established for City services provided under this code;
2. Fees and charges for the dedication and vacation of streets and other public areas within the City;
3. Any other fee or charge established by the Council in which the Council specifically states that the fee or charge is to be subject to the provisions of this chapter. (Ord. 82-72 §1, 1982).

### **3.32.020 Authority.**

The Tigard City Council shall have the authority to review and adopt by resolution rates for fees and charges reasonably related to the City's cost of service. The City Manager shall have authority to set interim fees and charges pending

adoption of a City Council resolution. (Ord. 02-06, Ord. 82-72 §2, 1982).

### **3.32.030 Method Of Determining Rates For Fees And Charges.**

1. Rates shall be based upon the reasonably determined costs for service and shall be based upon estimates from the current or proposed municipal budget for the following categories, as applicable:

- a. Materials and services;
- b. Capital outlay;
- c. Indirect costs;
- d. Depreciation costs; and
- e. Personnel costs.

2. In no case shall the rate for fees and charges exceed the reasonable costs for the service or services provided. (Ord. 82-72 §3, 1982).

### **3.32.040 Administration.**

The City Finance Director, or designee, shall be authorized to require a specific type of payment, in the event of a prior history of nonpayment, returned checks, and incidence of delayed, reduced or unpaid fees and charges. For applications which are subsequently withdrawn, the Finance Director, upon recommendation of the department head, may refund any or all of the fee amount not necessary to recover City costs incurred through the date of withdrawal. (Ord. 82-72 §4, 1982).

### **3.32.050 Fee Adjustments And Schedules.**

After January 1, 1983, adjustments in the rate of fees and charges shall be reviewed by the Council at least annually, on or before July 1st of

# TIGARD MUNICIPAL CODE

any year. The Council shall consider the following in adjustments to fees and charges: (a) the Portland Consumer Price Index; (b) the total wage increase in relevant union contracts; (c) costs for services analyses; and (d) the provisions of Section 3.32.030. (Ord. 82-72 §5, 1982).

## **3.32.060 Failure To Pay Fees And Charges.**

1. All persons submitting applications or otherwise utilizing services or facilities of the City shall pay the appropriate fee or charge imposed pursuant to this chapter.

2. If the fee or charge for an application is governed by the provisions of this chapter, failure to pay the same in full shall prevent the submission of such application. If such application is accepted through mistake or inadvertance, the City Finance Director shall give a notice of the balance due of such fee or charge, which balance shall be paid within ten days of the giving of such notice. The Finance Director may waive the penalty if the failure to pay the full fee or charge was not the fault of the applicant. An aggrieved applicant may appeal the penalty decision of the Director to the Council. If the fee or charge is unpaid after the ten-day period has expired, the application shall be considered withdrawn. Where action or work for which any permit is required under City code is started or proceeded with prior to obtaining said permit, the fees specified shall be doubled.

3. For all other fees and charges subject to this ordinance and not involving an application, the City Finance Director shall give notice of delinquency in writing, if a fee or charge is unpaid. Such fee or charge shall be paid within ten days of the sending of such notice and, in addition, a delinquency fee in an amount to be established by the Council by resolution and sufficient to cover the cost of administration of such fee shall also be imposed. If the fee or charge is unpaid at the end of the ten-day notification period, the initial

amount of the fee shall be doubled and the difference shall be deemed a penalty. (Ord. 82-72 §6, 1982).

## **3.32.070 Exemptions.**

The City Council is authorized to waive or exempt the fee or charge imposed upon an application or for the use of City facilities and services, if a nonprofit organization requests such a waiver in writing and the Council determines that community benefit from the proposed activity outweighs the financial burden on the City. The waiver or exemption shall not excuse the nonprofit organization from compliance with other requirements of this code. (Ord. 82-72 §7, 1982).

## **3.32.080 Ratification.**

The Council determines that fees previously set by resolutions of the Council were set to recover cost and are hereby ratified pursuant to the ordinance codified in this chapter and shall remain in effect until superseded pursuant to the ordinance codified in this chapter. (Ord. 82-72 §8, 1982).

## **3.32.090 Recreation Program**

*1. For purposes of the Public Works Department Recreation Program, City Council delegates its authority to adopt rates and charges, pursuant to Section 3.32.020, to the Director of Public Works.*

*2. Notwithstanding Section 3.32.070, the Public Works Director shall have the authority to waive, exempt, or otherwise reduce recreation program fees and charges.*

*3. The Public Works Director shall annually report back to Council on the Recreation Program activities and revenues.*

**AIS-2692**

**4.**

**Workshop Meeting**

**Meeting Date:** 05/17/2016

**Length (in minutes):** 10 Minutes

**Agenda Title:** Briefing on an Agreement with TriMet Regarding Cost Share Obligations for New Sidewalks Along SW Commercial Street and Pacific Highway

**Prepared For:** Andrew Newbury, Public Works

**Submitted By:** Judy Lawhead, Public Works

**Item Type:** Update, Discussion, Direct Staff

**Meeting Type:** Council Workshop Mtg.

**Public Hearing:** No

**Publication Date:**

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**Information**

**ISSUE**

Should Council consider an intergovernmental agreement (IGA) with TriMet regarding cost share obligations for new sidewalks along SW Commercial Street and Pacific Highway?

**STAFF RECOMMENDATION / ACTION REQUEST**

No action is required; formal consideration of the agreement is scheduled on a future agenda.

**KEY FACTS AND INFORMATION SUMMARY**

The adopted 2015-16 Capital Improvement Plan includes project #95042 – Commercial Street Sidewalk and Storm Facility (Main to Lincoln). The purpose of this project is twofold, to construct sidewalks along Commercial Street and to add a stormwater facility to treat runoff in this area. This IGA is for the sidewalk portion of the project only. The stormwater portion will be under a separate contract and managed by the city.

The sidewalk portion of this project is federally funded through the Multimodal Transportation Enhance Program (MTEP) and administered through ODOT. TriMet will serve as their local agency. Two separate IGAs are moving forward:

- ODOT with TriMet to act as their local agency
- TriMet with the City of Tigard for local project delivery.

Attachment 1 is the draft agreement between TriMet and the city. It outlines how the agencies will work together to design and build the following “City Projects”:



- Commercial St – 800 lineal feet of 8-foot sidewalk along Commercial St between Main St and Lincoln Ave under the Pacific Highway bridge. Fencing will be installed between the railroad tracks and pedestrian area.
- Commercial St Pedestrian Path – 655 lineal feet of paved pedestrian path between SW Center St and Commercial St. NOTE: City staff just recently completed a "lighter, quicker, cheaper" project for this pathway. However, additional work may be required on this path to meet all stormwater regulations. Staff will evaluate this as part of this project.
- SW Naeve to SW Beef Bend Rd – 510 lineal feet of sidewalk infill on Pacific Highway northbound.

The total cost for these projects is estimated to be \$1,305,000. The funding ratio is 89.73% of MTEP funds to 10.27% of City funds. MTEP funds are fixed at \$1,170,976. The City's contribution is \$134,024 and will be funded by gas tax.

The draft agreement also covers the potential for underruns and overruns. If there are any project underruns of the local share, TriMet will pay such underruns to the City. If there are any project overruns, these costs will need to be paid by the City. Pursuant to the TriMet/ODOT IGA, TriMet and ODOT shall mutually agree to project decisions regarding design standards, design exceptions, utility relocation expenses, right of way needs, preliminary engineering changes, construction engineering charges, and contract change orders as these decisions may impact the project costs. To protect against project overruns, TriMet will delegate these decisions to City for purposes of City projects.

## **OTHER ALTERNATIVES**

The council could propose changes to the agreement or could decide not to approve the agreement. Should the council decide not to approve the agreement, the consequence would likely mean that TriMet would not fund the project.

## **COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

Strategic Plan Goal 1: Facilitate walking connections to develop an identity.

## **DATES OF PREVIOUS COUNCIL CONSIDERATION**

None

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## **Fiscal Impact**

### **Fiscal Information:**

Total project cost noted in IGA for City Projects is \$1,305,000.

The funding ratio for the City Projects is 89.73% of MTEP funds to 10.27% of City funds. MTEP funds are fixed at \$1,170,976. The City's contribution is \$134,024.

Note: This is for the sidewalk portion of CIP project number 95042. Expected City project management and contingency costs related to this IGA are \$100,000 for a total City project cost of \$234,024. The remaining funds noted in CIP project number 95042 description sheet are for a stormwater quality facility that is not part of this IGA and will be separately managed by the City.

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### **Attachments**

TriMet-City of Tigard IGA

ODOT/TriMet IGA

Sidewalk Improvement Location Exhibit

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**INTERGOVERNMENTAL AGREEMENT  
BETWEEN TRIMET AND THE CITY OF TIGARD  
FOR COST SHARE OBLIGATIONS ALONG SW COMMERCIAL STREET & 99W**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON, a mass transit district of the state of Oregon, hereinafter referred to as "TriMet", and THE CITY OF TIGARD, a municipal corporation of the state of Oregon acting by and through its Elected Officials, hereinafter referred to as "City".

**I. RECITALS**

1. TriMet and ODOT have entered into a separate binding Intergovernmental Agreement to administer ODOT Agreement No. 30684: Barbur/OR-99W Corridor Safety & Access to Transit Project ("TriMet/ODOT IGA"). The TriMet/ODOT IGA is attached hereto as Exhibit A.
2. The TriMet/ODOT IGA is a mechanism for ODOT to administer the local projects set out in that agreement. Under the TriMet/ODOT IGA, ODOT has agreed to administer and deliver the following three projects (referred to herein as "City Projects") for the City of Tigard:
  - SW Commercial St – Design and construct 800 feet on an 8-foot sidewalk along SW Commercial St under the highway structure between Main St and SW Lincoln Ave and install fence between railroad and pedestrians. Project Budget: \$900,000. Local Match: \$92,430
  - SW Commercial St - Construct pedestrian path between SW Center St and Commercial St. Project Budget: \$75,000. Local Match: \$7,703
  - SW Naeve to SW Beef Bend Rd – Design and construct sidewalk infill on 99W northbound. Project Budget: \$330,000 Local Match: \$33,891
3. TriMet is willing to sign the TriMet/ODOT IGA to facilitate construction of the local projects. However, TriMet and the City understand and agree that the City Projects are being constructed by ODOT for the benefit of the City.
4. The total cost for the City Projects is estimated to be \$1,305,000 and funded as part of the Multimodal Transportation Enhance Program (MTEP). The Funding Ratio for the City Projects is 89.73% of MTEP funds to 10.27% of City funds. MTEP funds are fixed at \$1,170,976. The City's contribution is \$134,024.
5. The Parties desire to work together and with ODOT to complete the City Projects, under the terms of this Agreement and the TriMet/ODOT IGA.
6. The Parties are authorized to enter into this Agreement pursuant to the provisions of ORS Chapter 190.

Now, therefore, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

## **PARTY RESPONSIBILITIES**

### **A. City Responsibilities:**

1. City shall be responsible for funding the City Projects at the amount of the local share as set forth in the TriMet/ODOT IGA (10.27 percent, or \$134,024). These funds shall be deposited to ODOT within two fiscal years of execution of this Agreement and can be split among multiple fiscal years.
2. City shall be responsible for payment of all "Project Overruns" (as defined in the TriMet/ODOT IGA) and other costs related to the City Project.
3. City shall designate appropriate staff to the City Projects to carry out the City's responsibilities. This includes, but is not limited to, appropriate permitting staff.
4. City's Office of Public Works shall provide oversight and guidance to ODOT as needed for all activities related to the City Projects, including project management, design, right-of-way, public outreach, citizen involvement activities, engineering, permitting, utility coordination, and project construction.
5. City shall review and approve City Project plans and specifications developed by ODOT. Per the TriMet/ODOT IGA, ODOT will advertise and award a construction contract to the lowest responsible, responsive bidder, per ODOT policy.
6. City shall facilitate the processing of required permits and provide inspection services of civil and electrical work to ensure the City Projects are constructed to City standards.
7. City shall be responsible for the ownership and maintenance of the fence and pedestrian path constructed along SW Commercial St.

### **B. TriMet Responsibilities:**

1. TriMet shall work with the City to assist the City and ODOT in delivering the City Projects.
2. Pursuant to the TriMet/ODOT IGA, TriMet and ODOT shall mutually agree to project decisions regarding design standards, design exceptions, utility relocation expenses, right of way needs, preliminary engineering charges, construction engineering charges, and Contract Change Orders as these decisions may impact the Total Project Cost. TriMet delegates these decisions to City for purposes of City Projects.
3. TriMet is not responsible for payment of any costs for City Projects under this Agreement or under the TriMet/ODOT IGA. Any costs related to the City Projects will be paid by City.
4. In the event there are "Project Underruns" of the local share (as defined in the TriMet/ODOT IGA) that are returned from ODOT to TriMet, TriMet agrees to pay such underruns to the City.

## II. GENERAL PROVISIONS

1. Each party has designated a project manager as its formal representative for purposes of this Project:

Young Park  
TriMet  
1800 SW 1<sup>st</sup> Avenue, Suite 300  
Portland, OR 97201  
Phone: (503) 962-2138  
Email: parky@trimet.org

Andrew Newbury  
City of Tigard  
13125 SW Hall Blvd  
Tigard, OR 97223  
Phone: (503) 718-2472  
Email: andrewn@tigard-or.gov

The Project Managers are authorized to approve work and billings, to give notices, to execute amendments to this Agreement that do not increase the compensation, to terminate this Agreement and to carry out any other act referred to herein.

Either party may designate a different project manager by giving written notification to the other party as provided in this paragraph.

City shall appropriately authorize its officials to enter into and execute this Agreement.

2. **Relationship of the Parties.** Each of the parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one party shall be deemed to be an employee, agent or contractor of the other party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each party hereby specifically disclaims any such relationship.
3. **No Third-Party Beneficiary.** Except as set forth herein, this Agreement is between the parties and creates no third-party beneficiaries. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third-parties unless third-persons are expressly described as intended to be beneficiaries of its terms.
10. **Compliance with Laws.** The parties shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement. If a Party is not in compliance with any law, regulation, executive order or ordinance, it shall take immediate steps to gain compliance.
11. **Insurance Requirements.** The parties agree to each maintain insurance or self-insurance which meets the following requirements:
  - 11.1 **Comprehensive or Commercial General Liability Insurance covering bodily injury and property damage.** This insurance shall include personal injury coverage; contractual liability coverage for the indemnity provided under this Agreement; and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000, or the equivalent. Each annual aggregate limit shall not be less than \$2,000,000, when applicable. The liability coverage required for performance of the Agreement shall include both TriMet and City as additional insureds, to the extent allowed by law. The party obtaining such

insurance shall furnish the other party with a Certificate of Insurance for the limits set out above, which is to be in force and applicable to the Work. The insurance coverage shall not be amended, altered, modified, or canceled without at least thirty (30) days prior written notice to TriMet or City, as applicable.

**11.2 Worker's Compensation.** TriMet and City, and all employers working under this Agreement, are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Each party shall be responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to, retirement system contributions, Workers Compensation, unemployment taxes, and state and federal withholdings.

**12. Indemnification.** Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the parties shall hold harmless, indemnify and defend the other and its officers, directors, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent acts or omissions of the indemnitor, its officers, employees, or agents.

**13. Effective and Termination Dates.** This Agreement shall be effective upon date all required signatures are obtained and shall terminate upon completion of the City Projects by ODOT.

**13.1 Early Termination of Agreement.**

13.1.1 City and TriMet, by mutual written agreement, may terminate this Agreement at any time. If such early termination by the City results in money being owed to ODOT under the TriMet/ODOT IGA, City shall pay such amounts to ODOT within 30 days of demand by ODOT or TriMet.

13.1.2 Either City or TriMet may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give the other party written notice of the breach and of the party's intent to terminate. If the breaching party has not entirely cured the breach within thirty days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination. If such early termination results from a breach by the City, and results in money being owed to ODOT under the TriMet/ODOT IGA, City shall pay such amounts to ODOT within 30 days of demand by ODOT or TriMet.

**14. Remedies.** The remedies provided under this Agreement shall not be exclusive. The parties also shall be entitled to any other equitable and legal remedies that are available.

**15. Oregon Law, Dispute Resolution and Forum.** This Agreement shall be construed according to the laws of the State of Oregon. TriMet and City shall negotiate in good faith to resolve any dispute arising out of this Agreement. If the parties are unable to resolve any dispute within fourteen calendar days, the parties are free to pursue any legal remedies that may be available. Any litigation between City and TriMet arising under this Agreement or out of work performed under this Agreement shall occur, if in the

state courts, in the Multnomah City Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.

16. **Assignment.** Neither TriMet nor City shall assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the other.
17. **Severability/Survivability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken. All provisions concerning indemnity survive the termination of this Agreement for any cause.
18. **Interpretation of Agreement.** This Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision. The Section headings contained in this Agreement are for ease of reference only and shall not be used in constructing or interpreting this Agreement.
19. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire Agreement between the parties on the subject matter hereof and supersede all prior or contemporaneous written or oral understandings, representations or communications of every kind. There are no understandings, Agreements, or representations, oral or written, not specified herein regarding this Agreement. No course of dealing between the parties and no usage of trade will be relevant to supplement any term used in this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver by a party of that or any other provision.
20. **Inspection of Records.** Each of the parties shall have the right to inspect, at any reasonable time, such records in the possession, custody or control of the other party as it deems necessary for review of the other party's obligations and its rights under this Agreement. The cost of such inspection shall be borne by the inspecting party.

**IN WITNESS WHEREOF**, the parties hereto have executed this Intergovernmental Agreement.

**TRI-MET METROPOLITAN  
TRANSPORTATION DISTRICT OF OREGON**

By \_\_\_\_\_  
Daniel Blocher, Executive Director

Date \_\_\_\_\_

**CITY OF TIGARD**, by  
and through its elected officials

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_  
Auditor

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY FOR TRIMET**

By: \_\_\_\_\_

Lance Erz, Deputy General Counsel

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY FOR CITY**

By: \_\_\_\_\_

City Attorney

Date \_\_\_\_\_



**DRAFT: February 12, 2016**

**NOTE: REVISIONS TO THIS AGREEMENT ARE ONLY ALLOWED IN YELLOW HIGHLIGHTED AREAS**

**LOCAL AGENCY AGREEMENT  
MULTIMODAL TRANSPORTATION ENHANCE PROGRAM (MTEP)  
Project Name Barbur/OR-99W Corridor Safety & Access to Transit**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and TriMet, acting by and through its Board of Directors, hereinafter referred to as "Agency"; both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. OR 99W and a portion of SW Barbur Boulevard are a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). A portion of SW Barbur Boulevard (not part of the OR99W route system), SW Hooker Street, SW Lane Street, SW Naito Parkway; SW 19<sup>th</sup> Street and SW 53<sup>rd</sup> Avenue are all a part of the city street system under the jurisdiction and control of the City of Portland. SW Commercial Street, SW Naeve Street, and SW Durham Road are all a part of the city street system under the jurisdiction and control of the City of Tigard. SW Beef Bend Road, SW Cipole Road, and SW Bull Mountain Road are all a part of the county road system under the jurisdiction and control of Washington County.
3. Agency has agreed that ODOT will oversee this project on behalf of the Agency.

**NOW THEREFORE** the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

**DEFINITIONS**

1. "Contract Award" means the issuance of a Notice to Proceed (NTP) to the construction contractor.
2. "Funding Ratio" means the relationship between MTEP funds and Total Project Cost and Other Funds. This ratio is established at the time the agreement is executed and does not change during the course of the project. The ratio governs the obligation of MTEP funds at the time of construction/consultant award or Project Closeout.
3. "Match" means the minimum amount State or Agency must contribute to match the federal aid funding portion of the project.

4. "MTEP" means Multimodal Transportation Enhance Program and may be funded by a combination of federal and state funds. "Other Funds" means other funding required to complete the project including but not limited to state, federal, and agency funds.
5. "Other Funds" means other funding required to complete the project including but not limited to state, federal, and agency funds.
6. "Project Closeout" means project is ready to close as there are no more expenditures associated with project.
7. "Project Overruns" means the final cost estimate at Contract Award exceeds the estimated Total Project Cost estimate in this Agreement, or the final actual project costs exceed the final cost estimate at Contract Award.
8. "Project Underrun" means the final cost estimate at Contract Award is below the estimated Total Project Cost in this Agreement, or the final actual project costs are below the final cost estimate at Contract Award. Total Project Cost means the estimated amount as show in this Agreement. This amount will include MTEP funds, local matching funds, and other funds as required to complete project as stated in this Agreement.

## TERMS OF AGREEMENT

1. Under such authority, Agency and State agree to State delivering the "Barbur/OR-99W Corridor Safety & Access to Transit" project on behalf of Agency, hereinafter referred to as "Project" and as further defined below. The location of the Project is approximately as shown on the map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. The Project Description and Deliverables are as follows:
  - a. Description: Design, acquire right-of-way for, and construct modifications to improve safety, access to transit, and active transportation through improvements such as sidewalk infill, enhancing existing bus stops, and bus activated extended green time at multiple signals.
  - b. Deliverables:
    - SW Barbur Blvd – City of Portland portion:
      - SW Hooker St – Design and construct sidewalk infill
      - SW Lane St and SW Naito Pkwy – Design and construct an enhanced pedestrian crossing at the intersection of Barbur Blvd and Lane/Naito Parkway
    - SW Barbur Blvd – ODOT portion:
      - SW 19<sup>th</sup> Ave – Design and construct sidewalk infill
      - SW 53<sup>rd</sup> Ave – Design and construct sidewalk infill, install shared bike/ped

facility, and include drainage, as appropriate

- OR 99W :
  - SW Commercial St – Design and construct 800 feet of an 8-foot sidewalk along SW Commercial St under the highway structure between Main Street and SW Lincoln Avenue and install fence between railroad and pedestrians
  - SW Commercial St – Construct pedestrian path between SW Center Street and Commercial Street
  - SW Naeve St to SW Beef Bend Rd – Design and construct sidewalk infill on 99W northbound
  - SW Bull Mountain Rd (NB) – Design and construct sidewalk infill, excavate hillside, construct retaining wall, install bus shelter and pad, and address drainage, as appropriate
  - SW Bull Mountain Rd (SB) – Design and construct sidewalk infill, install bus pad and adjust guardrail
  - Transit Signal Priority – Add priority and operations treatments at intersections between I-5 and Durham Rd (Signal priority at up to 16 locations, operations treatments at up to 6 locations)
- Construct retaining walls and drainage improvements as appropriate

3. Both Parties agree that an amendment to this Agreement is required if any changes are made to the Project as described in Project Description and Deliverables above.
4. The Project shall be conducted as a part of the Multimodal Transportation Enhance Program (MTEP) with funds provided under Title 23, United States Code and may include a combination of federal and state funds. The Total Project Cost is estimated at \$3,605,000, which is subject to change. MTEP federal and state funding for this Project shall be limited to \$3,234,766. Agency shall be responsible for all remaining costs, including 10.27 percent match for all MTEP eligible costs, and any non-participating costs, and all costs in excess of the available federal or state funds.
5. The Funding Ratio for this Project is 89.73% of MTEP funds to 10.27% Agency funds and applies to Project Underruns. The Funding Ratio for this Project does not apply in the case of Project Overruns.
6. If, at the time of Contract Award or Project Closeout, the Project Underruns the estimated Total Project Cost in this Agreement, MTEP funding and Other Funds will be obligated proportionally based on the Funding Ratio. Any unused MTEP funds, will be retained by State, and will not be available for use by Agency for this Agreement or any other projects.

7. Project Overruns which occur at the time of Contract Award, and or at the time of Project Closeout are the responsibility of the Agency.
8. Project decisions regarding design standards, design exceptions, utility relocation expenses, right of way needs, preliminary engineering charges, construction engineering charges, and Contract Change Orders, as applicable shall be mutually agreed upon between the Agency and the State, as these decisions may impact the Total Project Cost. However, State may award a construction contract at ten (10) percent (%) over engineer's estimate without prior approval of Agency.
9. State will submit the requests for federal funding to Federal Highway Administration (FHWA). The federal funding for this Project is contingent upon approval of each funding request by FHWA. Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Agency expense.
10. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
11. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.
12. This Agreement may be terminated by mutual written consent of both Parties.
13. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
  - c. If Agency fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.

- 14a. Information required by 2 CFR 200.331(a), except for (xiii) Indirect cost rate, shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by ODOT to Agency with the Notice to Proceed.
- b. The indirect cost rate for this project at the time the agreement is written is zero percent.
15. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
16. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.
17. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to FHWA, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
18. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
19. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
20. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
21. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached Exhibits will control over Project application and documents provided by Agency to State. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties

and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

22. State Contact for this Agreement is Kelly Brooks, Interim Policy and Development Manager, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

23. Agency's Contact for this Project is Neil McFarlane, TriMet General Manager, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

***SIGNATURE PAGE TO FOLLOW***

This Project is in the 2015-2018 Statewide Transportation Improvement Program (STIP), (Key #18838) that was adopted by the Oregon Transportation Commission on December 18, 2014.

**TRIMET**, by and through its elected officials

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Agency Counsel

Date \_\_\_\_\_

**Agency Contact:**

Neil McFarlane  
1800 SW 1<sup>st</sup> Avenue, Suite 300  
Portland, OR 97201  
503.962.7505  
administration@trimet.org

**State Contact:**

Kelly Brooks, Interim Policy and  
Development Manager  
123 NW Flanders Street  
503.731.3087  
Kelly.BROOKS@odot.state.or.us

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 1 Enhance Program Mgr.

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 1 Manager

Date \_\_\_\_\_

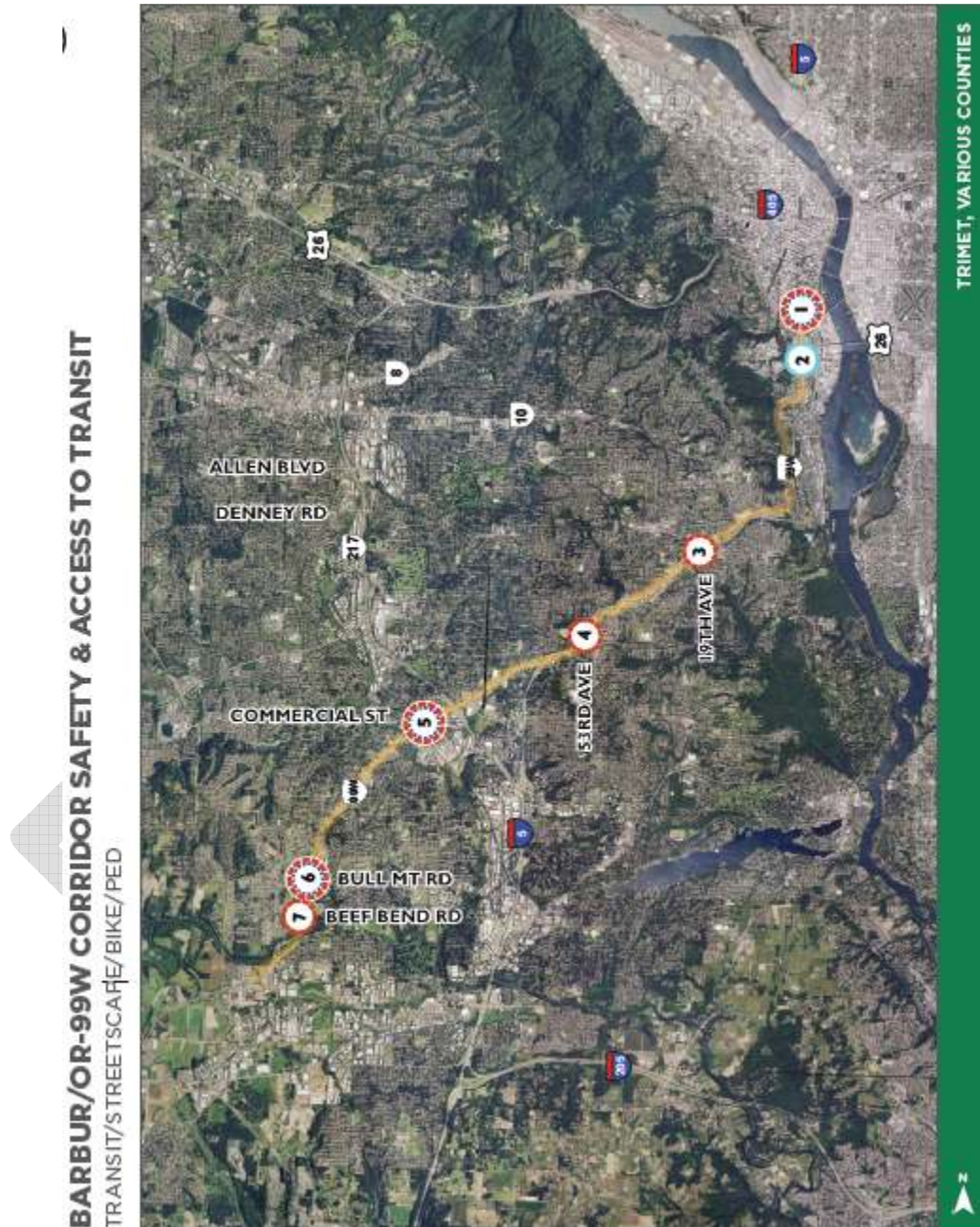
**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_



## EXHIBIT A – Project Location Map





**EXHIBIT B – MAINTENANCE RESPONSIBILITIES ON ODOT FACILITIES  
Barbur/OR-99W Safe Access to Transit Project**

TriMet is responsible for the ownership and maintenance of the following improvements installed and/or constructed within the project limits of the project.

SW Hooker Street:	Bus Stop
Commercial Street:	Fence and pedestrian path
Bull Mountain Rd:	Retaining wall, bus shelter, retaining pad
Corridor-wide:	Bus stop location improvements

**ATTACHMENT NO. 1 to Agreement No. 30684  
SPECIAL PROVISIONS**

1. State, or State's consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, hydraulic studies, assist with acquisition of necessary right of way and easements; obtain all required permits and arrange for all utility relocations/adjustments. State or the consultant shall conduct all work components necessary to complete the Project.
2. Upon State's award of the construction contract, State, or State's consultant, shall be responsible for all required materials testing and quality documentation; and prepare necessary documentation with ODOT-qualified personnel, and State will make all contractor payments. Contract administration, construction engineering and inspection will follow the most current version of the ODOT Construction Manual and the ODOT Inspector's Manual.
3. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project.
4. State will perform work throughout the duration of the Project and shall provide a preliminary estimate of State costs for this work. Prior to the start of each Project phase State shall provide an updated estimate of State costs for that phase. Such phases generally consist of Preliminary Engineering, Right of Way, Utility, and Construction. Agency understands that State's costs are estimates only and agrees to reimburse State for actual cost incurred per this Agreement.
5. State and Agency agree that the useful life of this Project is defined as **(20 years)**.
6. Agency grants State the right to enter onto Agency property for the performance of duties as set forth in this Agreement.
7. Both Parties agree to enter into separate agreement(s) with the City of Portland, City of Tigard, and Washington County prior to construction of this Project for the purpose of obtaining permission from all agencies for State to perform the work on their facilities and to address any future maintenance of the Project improvements constructed on their facilities. **Construction of this Project shall not proceed without full execution of said separate agreement(s).**
8. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach. Agency will be ineligible to receive or apply for any Title 23, United States Code funds until State receives full reimbursement of the costs incurred.

9. Agency agrees to accept all maintenance responsibilities, at its own expense, for all bus stop improvements, including lighting, as listed in Exhibit B. Agency shall ensure that the power company for said lighting sets up its billing in Agency's name and will bill Agency for all costs at no expense to State.
10. Prior to commencement of construction, State and Agency shall review the locations of improvements to be constructed in the Project, and if further clarification of maintenance responsibilities is warranted, the Parties shall enter into a separate maintenance agreement
11. To the extent permitted by Article XI, Section 7 and Section 10 of the Oregon Constitution and by the Oregon Tort Claims Act, Agency shall indemnify, within the limits of the Tort Claims Act, State against liability for damage to life or property arising from Agency's activities under this Agreement, provided that Agency will not be required to indemnify State for any such liability arising out of the wrongful acts of employees or agents of State.

## **ATTACHMENT NO. 2 FEDERAL STANDARD PROVISIONS**

### **PROJECT ADMINISTRATION**

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will act for Agency in other matters pertaining to the Project. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations. State or its consultant, with Agency involvement shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a person in responsible charge "liaison" to coordinate activities and assure that the interests of both Parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.
3. State will provide or secure services to perform plans, specifications and estimates (PS&E), construction contract advertisement, bid, award, contractor payments and contract administration. A State-approved consultant may be used to perform preliminary engineering, right of way and construction engineering services.

### **PROJECT FUNDING REQUEST**

4. State shall submit a separate written Project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) Program Development (Planning), b) Preliminary Engineering (National Environmental Policy Act - NEPA, Permitting and Project Design), c) Right of Way Acquisition, d) Utilities, and e) Construction (Construction Advertising, Bid and Award). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at Agency expense. State, the consultant or Agency shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by State. State shall notify Agency in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations.

### **FINANCE**

5. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount for the federal funds and any portion of the Project, which is not covered by federal funding, unless otherwise agreed to and specified in the intergovernmental Agreement (Project Agreement). Agency must obtain written approval from State to use in-kind

contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Project Agreement. State will also determine and clearly state in the Project Agreement if recipient is a subrecipient or vendor, using criteria 2 CFR 200.330.

6. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall pay one hundred (100) percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds or allocations of State Highway Trust Funds to Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines Manual that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State.
7. Agency agrees that costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon by the Parties.
8. Agency's estimated share and advance deposit.
  - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
  - b) Agency's construction phase deposit shall be one hundred ten (110) percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is cancelled. Any balance of a cash deposit in excess of amount needed, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
  - c) Pursuant to Oregon Revised Statutes (ORS) 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool), and an Irrevocable Limited Power of Attorney is sent to State's Active Transportation Section, Funding and Program Services Unit, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
9. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear one hundred (100) percent of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one hundred (100) percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.

10. Agency shall follow the requirements stated in the Single Audit Act. Agencies expending \$500,000 or more in Federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, shall have a single organization-wide audit conducted in accordance with the Single Audit Act of 1984, PL 98-502 as amended by PL 104-156 and subject to the requirements of 49 CFR Parts 18 and 19. Agencies expending \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014 shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Agencies expending less than \$500,000 in Federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials based on the records retention period identified in the Project Agreement. The cost of this audit can be partially prorated to the federal program.
11. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
12. Agency shall present invoices for one hundred (100) percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison for review, approval and reimbursement to Agency. Costs will be reimbursed consistent with federal funding provisions and the Project Agreement. Such invoices shall identify the Project by the name of the Project Agreement, reference the Project Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one-month duration, based on actual expenses to date. All invoices received from Agency must be approved by State's Liaison prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of the Federal-Aid Policy Guide (FAPG), Title 23 CFR parts 1.11, 140 and 710. Final invoices shall be submitted to State for processing within forty-five (45) days from the end of each funding phase as follows: a) preliminary engineering, which ends at the award date of construction b) last payment for right of way acquisition and c) contract completion for construction. Partial billing (progress payment) shall be submitted to State within forty-five (45) days from date that costs are incurred. Invoices submitted after 45 days may not be eligible for reimbursement by FHWA. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the Project Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period ending on the later of six (6) years following the date of final voucher to FHWA or after resolution of any disputes under the Project Agreement. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (2 CFR 200.333(c)).
13. Agency shall, upon State's written request for reimbursement in accordance with Title 23, CFR part 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if any of the following events occur:
  - a) Right of way acquisition is not undertaken or actual construction is not started by the close of the twentieth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized for right of way acquisition. Agency may submit a written request to State's Liaison for a time extension beyond the twenty (20) year limit with no repayment of federal funds and State

will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.

- b) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized. Agency may submit a written request to State's Liaison for a time extension beyond the ten (10) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.

- 14. State shall, on behalf of Agency, maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that the Project is completed in conformance with approved plans and specifications.
- 15. State shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay all reimbursable costs of the Project. Agency may request a statement of costs-to-date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal one hundred (100) percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of the Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.

## **STANDARDS**

- 16. Agency and State agree that minimum design standards on all local agency jurisdictional roadway or street projects on the National Highway System (NHS) and projects on the non-NHS shall be the American Association of State Highway and Transportation Officials (AASHTO) standards and be in accordance with State's Oregon Bicycle & Pedestrian Design Guide (current version). State or the consultant shall use either AASHTO's A Policy on Geometric Design of Highways and Streets (current version) or State's Resurfacing, Restoration and Rehabilitation (3R) design standards for 3R projects. State or the consultant may use AASHTO for vertical clearance requirements on Agency's jurisdictional roadways or streets.
- 17. Agency agrees that if the Project is on the Oregon State Highway System or State-owned facility, that design standards shall be in compliance with standards specified in the current ODOT Highway Design Manual and related references. Construction plans for such projects shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current Oregon Standard Specifications for Highway Construction and current Contract Plans Development Guide.
- 18. State and Agency agree that for all projects on the Oregon State Highway System or State-owned facility any design element that does not meet ODOT Highway Design Manual design standards must be justified and documented by means of a design exception. State and Agency further agrees that for all projects on the NHS, regardless of funding source; any

design element that does not meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retains authority for their approval. FHWA shall review any design exceptions for projects subject to Focused Federal Oversight and retains authority for their approval.

19. Agency agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the Manual on Uniform Traffic Control Devices and Oregon Supplement as adopted in Oregon Administrative Rule (OAR) 734-020-0005. State or the consultant shall, on behalf of Agency, obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.
20. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

## **PRELIMINARY & CONSTRUCTION ENGINEERING**

21. Preliminary engineering and construction engineering may be performed by either a) State, b) State-approved consultant, or c) certified agency. Engineering work will be monitored by State or certified agency to ensure conformance with FHWA rules and regulations. Project plans, specifications and cost estimates shall be performed by either a) State, b) State-approved consultant or c) certified agency. State shall review and approve Project plans, specifications and cost estimates. State shall, at project expense, review, process and approve, or submit for approval to the federal regulators, all environmental statements. State shall, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
22. Agency may request State's two-tiered consultant selection process as allowed by OAR 137-048-0260 to perform architectural, engineering, photogrammetry, transportation planning, land surveying and related services (A&E Services) as needed for federal-aid transportation projects. Use of the State's processes is required to ensure federal reimbursement. State will award and execute the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, 2 CFR part 1201, ORS 279A.055, 279C.110, 279C.125, OAR 137-048-0130, OAR 137-048-0220(4) and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or the consultant prior to receiving authorization from State to proceed.
23. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
24. State or certified agency shall prepare construction contract and bidding documents, advertise for bid proposals, and award all construction contracts.



25. Upon State's or certified agency's award of a construction contract, State or certified agency shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in State's Manual of Field Test Procedures, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
26. State shall, as a Project expense, assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). State's liaison shall process reimbursement for federal participation costs.

#### **REQUIRED STATEMENT FOR United States Department of Transportation (USDOT) FINANCIAL ASSISTANCE AGREEMENT**

27. By signing the Federal-Aid Agreement to which these Federal Standard Provisions are attached, Agency agrees to adopt State's DBE Program Plan, available at [http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/sbe/dbe/dbe\\_program.aspx#plan](http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/sbe/dbe/dbe_program.aspx#plan). Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. Agency agrees to take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. State's DBE program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this Project Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Project Agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 United States Code (USC) 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

#### **Disadvantaged Business Enterprises (DBE) Obligations**

28. State and Agency agree to incorporate by reference the requirements of 49 CFR part 26 and State's DBE Program Plan, as required by 49 CFR part 26 and as approved by USDOT, into all contracts entered into under this Project Agreement. The following required DBE assurance shall be included in all contracts:

*"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR part 26 in the award and administration of federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b))."*

29. State and Agency agree to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
30. The Parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work

including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR parts 1.11, 140, 635, 710, and 771; Title 49 CFR parts 24 and 26; , 2 CFR 1201; Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, the provisions of the FAPG and *FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide*. State and Agency agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim and not by reference.

## **RIGHT OF WAY**

31. State and the consultant, if any, agree that right of way activities shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, and the *ODOT Right of Way Manual*, Title 23 CFR part 710 and Title 49 CFR part 24. State, at Project expense, shall review all right of way activities engaged in by Agency to ensure compliance with all laws and regulations.
32. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of projects. State or the consultant may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project in accordance with the *ODOT Right of Way Manual*, and with the prior approval from State's Region Right of Way office.
33. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each Party. If the Project has the potential of needing right of way, to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for requesting the obligation of project funding from FHWA. State, at Project expense, shall be responsible for coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through State's Liaison, who will forward the request to State's Region Right of Way office on all projects. State or the consultant must receive written authorization to proceed from State's Right of Way Section prior to beginning right of way activities. All projects must have right of way certification coordinated through State's Region Right of Way office to declare compliance and project readiness for construction (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on a project). State's Liaison shall contact State's Region Right of Way office for additional information or clarification on behalf of Agency.
34. Agency agrees that if any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
35. State or the consultant shall ensure that all project right of way monumentation will be conducted in conformance with ORS 209.155.

36. State and Agency grants each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

## **RAILROADS**

37. State or Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the State's Liaison, who will contact State's Railroad Liaison on behalf of Agency. Only those costs allowable under Title 23 CFR part 140 subpart I, and Title 23 part 646 subpart B shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing and, at Project expense, to provide railroad coordination and negotiations through the State's Utility & Railroad Liaison on behalf of Agency. However, State is under no obligation to agree to perform said duties.

## **UTILITIES**

38. State, the consultant, or Agency shall follow State established statutes, policies and procedures when impacts occur to privately or publicly-owned utilities. Policy, procedures and forms are available through the State Utility Liaison or State's Liaison. State, the consultant or Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility & Railroad Liaison. Only those utility relocations, which are eligible for reimbursement under the FAPG, Title 23 CFR part 645 subparts A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. Agency may send a written request to State, at Project expense, to arrange for utility relocations/adjustments lying within Agency jurisdiction. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. Agency shall not perform any utility work on state highway right of way without first receiving written authorization from State.

## **GRADE CHANGE LIABILITY**

39. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
40. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
41. Agency, if a City, by execution of the Project Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the Project covered by the Project Agreement.

## **MAINTENANCE RESPONSIBILITIES**

42. Agency shall, at its own expense, maintain operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. The useful life of the Project is defined in the Special Provisions. State may conduct periodic inspections during the life of

the Project to verify that the Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of the Project Agreement. In the event the Project will include or affect a state highway, this provision does not address maintenance of that state highway.

## **CONTRIBUTION**

43. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
44. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
45. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

## **ALTERNATIVE DISPUTE RESOLUTION**

46. The Parties shall attempt in good faith to resolve any dispute arising out of this Project Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

## **WORKERS' COMPENSATION COVERAGE**

47. All employers, including Agency, that employ subject workers who work under this Project Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than five hundred thousand (\$500,000) must be included. State and Agency shall ensure that each of its contractors complies with these requirements.

## **LOBBYING RESTRICTIONS** – pursuant to Form FHWA-1273, Required Contract Provisions

48. Agency certifies by signing the Project Agreement that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.





Commercial St. Sidewalk -  
Lincoln Ave to Main St.

Commercial St. Pedestrian Path -  
Center St to Commercial St

Feet  
0 83





99W NB Sidewalk Fill -  
Beef Bend Rd to Naeve St.



**AIS-2691**

**5.**

**Workshop Meeting**

**Meeting Date:** 05/17/2016

**Length (in minutes):** 45 Minutes

**Agenda Title:** Discussion of Proposed Code Changes Related to System Development Charges

**Prepared For:** Cara Fitzpatrick, Finance and Information Services

**Submitted By:** Cara Fitzpatrick, Finance and Information Services

**Item Type:** Update, Discussion, Direct Staff      **Meeting Type:** Council Workshop Mtg.

**Public Hearing:** No

**Publication Date:**

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**Information**

**ISSUE**

Discussion of proposed changes to the Tigard Municipal Code Chapter 3.24, System Development Charge Program, and adopted Ordinances 15-08 and 15-09 to clarify and improve administration of system development charges.

**STAFF RECOMMENDATION / ACTION REQUEST**

Requesting Council's direction to bring forward proposed code changes at the June 14, 2016 Council meeting.

**KEY FACTS AND INFORMATION SUMMARY**

The following timeline and background are relevant for discussion on this agenda item:

On 4/28/2015, through Ordinance 15-08, Council adopted a citywide Transportation System Development Charge (SDC) and a related SDC Methodology Report that provided the foundation for the charge. These changes became effective on July 1, 2015 and January 1, 2016 and are reflected in the Tigard Municipal Code (TMC), Chapter 3.24, System Development Charge Program.

On 05/19/2015, through Ordinance 15-09, Council adopted a Parks System Development Charge Methodology. The Parks SDC Methodology Report provided the foundation for the charge. Both Ordinance 15-08 and 15-09 also addressed development in River Terrace. To assist with the implementation of the Transportation and Parks SDCs, an SDC Administrative Procedures Guide was adopted in April of 2015.

In the course of applying and implementing the documents mentioned above, which was



consistent with council's policy direction, management noted inconsistencies and procedural gaps among the various documents. Therefore an interdepartmental SDC workgroup was created with representatives from Finance and Information Services, Public Works, Community Development and the City Attorney's Office with the goal of refining and clarifying the existing adopted documents. The SDC workgroup has been meeting twice a week since February.

The following proposed amendments are recommended by the SDC workgroup to address specific and time sensitive development issues for parks and streets in River Terrace and multi-family development citywide. The proposed amendments are to TMC Chapter 3.24 (adopted via Ordinance 15-08) and are summarized below. The proposed draft text is attached. Items 1 and 2 below were previously discussed and approved by Council in connection with the adoption of Ordinances 15-08 and 15-09.

1. Allow issuance of Parks SDC credits in River Terrace for construction of new neighborhood parks that were not required as a condition of development approval and that meet the city's level of service standard. This change is proposed to be retroactive to January 1, 2016.
2. Allow issuance of Transportation SDC credits for 50% of the local street portion of River Terrace Boulevard. This would be in addition to the credits allowed for non-local portions of the street.
3. Allow for deferral of payment until occupancy for Transportation System Development Charge (TSDC) on multi-family development. This ensures consistency in administering TSDC and Transportation Development Tax (TDT).

Once Council approves any amendments to TMC 3.24, the next steps for the SDC workgroup include making the corresponding changes to the SDC Administrative Procedures Guide with the City Manager's approval.

## **OTHER ALTERNATIVES**

Council can choose not to adopt the recommended code changes relating to system development charges.

## **COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

Parks System Master Plan

Trail System Master Plan

Transportation System Master Plan

River Terrace Funding Strategy

Tigard Municipal Code Chapter 3.24

## **DATES OF PREVIOUS COUNCIL CONSIDERATION**

Council approved documents relating to system development charges on:

04/28/2015 - Adopt Ordinance 15-08, Resolution 15-15

05/19/2015 - Adopt Ordinance 15-09

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**Attachments**

Proposed SDC Amendments - Edited Version

Proposed SDC Amendments - Clean Version

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## Proposed Amendment #1

### 3.24.120 Credits

G. In calculating improvement fee credits for the River Terrace Overlay portion of the city's park SDC only, an improvement fee credit shall be given as follows:

1. For the cost of a bonded or completed qualified public improvement, pursuant to Section 3.24.120.B.
2. Notwithstanding Section 3.24.120.B.1, for a neighborhood park that is accepted by the city; shown in the River Terrace Park System Master Plan; and determined to meet the city's minimum level of service standards and design guidelines as described in the Tigard Park System Master Plan, regardless of whether the park was imposed as a condition of development approval. The credit shall include both the costs of meeting and exceeding the city's minimum standards to the extent needed to serve the applicant's new development. The amount of the credit shall be limited to the actual reasonable costs approved by the city based upon the location of the park, level of service, park features, and consistency with the city's adopted Park System Master Plans.

H. The request for credit shall be filed in writing no later than 60 days after acceptance of the improvement by the city.

I. Section 3.24.120.G shall apply to parks completed after January 1, 2016.

J. A credit issued under 3.24.120.G may be applied only to the River Terrace Overlay SDC, is not a credit against the citywide park SDC, and is not transferable to properties outside of the River Terrace Community Plan area.

## Proposed Amendment #2

### 3.24.120 Credits

K. In addition to Section 3.24.120.B.1, the cost of constructing River Terrace Boulevard is 50% credit eligible for city-approved local street elements and 100% credit eligible for city-approved over-capacity street elements.

### Proposed Amendment #3

#### 3.24.090 Collection of Charge

- C. The administrator shall collect the applicable SDC from the permittee. The administrator shall not issue such permit or allow such connection until the charge has been paid in full; deferral has been approved pursuant to Section 3.24.090.D; or unless an exemption is has been granted pursuant to Section 3.24.110; or unless provision for installment payments has been made, pursuant to Section 3.24.100, which follows.
- D. Notwithstanding subsection A of this section, the permittee may apply for a deferral of payment of the transportation SDC to occupancy. Deferral may only be granted in cases where the amount due exceeds the amount of transportation SDC on a single family detached residence. The request must be made in writing to the Administrator no later than the time of application for a building permit. The Administrator shall grant deferral of the transportation SDC; however, any deferred charge shall be paid in full prior to the issuance of an occupancy permit. The amount of transportation SDC due on deferred obligations shall be the amount in effect at the time of issuance of the occupancy permit.

### Proposed Amendment #1

#### 3.24.120 Credits

- G. In calculating improvement fee credits for the River Terrace Overlay portion of the city's park SDC only, an improvement fee credit shall be given as follows:
1. For the cost of a bonded or completed qualified public improvement, pursuant to Section 3.24.120.B.
  2. Notwithstanding Section 3.24.120.B.1, for a neighborhood park that is accepted by the city; shown in the River Terrace Park System Master Plan; and determined to meet the city's minimum level of service standards and design guidelines as described in the Tigard Park System Master Plan, regardless of whether the park was imposed as a condition of development approval. The credit shall include both the costs of meeting and exceeding the city's minimum standards to the extent needed to serve the applicant's new development. The amount of the credit shall be limited to the actual reasonable costs approved by the city based upon the location of the park, level of service, park features, and consistency with the city's adopted Park System Master Plans.
- H. The request for credit shall be filed in writing no later than 60 days after acceptance of the improvement by the city.
- I. Section 3.24.120.G shall apply to parks completed after January 1, 2016.
- J. A credit issued under 3.24.120.G may be applied only to the River Terrace Overlay SDC, is not a credit against the citywide park SDC, and is not transferable to properties outside of the River Terrace Community Plan area.

### Proposed Amendment #2

#### 3.24.120 Credits

- K. In addition to Section 3.24.120.B.1, the cost of constructing River Terrace Boulevard is 50% credit eligible for city-approved local street elements and 100% credit eligible for city-approved over-capacity street elements.

### Proposed Amendment #3

#### **3.24.090 Collection of Charge**

- C. The administrator shall collect the applicable SDC from the permittee. The administrator shall not issue such permit or allow such connection until the charge has been paid in full; deferral has been approved pursuant to Section 3.24.090.D; exemption has been granted pursuant to Section 3.24.110; or unless provision for installment payments has been made, pursuant to Section 3.24.100, which follows.
- D. Notwithstanding subsection A of this section, the permittee may apply for a deferral of payment of the transportation SDC to occupancy. Deferral may only be granted in cases where the amount due exceeds the amount of transportation SDC on a single family detached residence. The request must be made in writing to the Administrator no later than the time of application for a building permit. The Administrator shall grant deferral of the transportation SDC; however, any deferred charge shall be paid in full prior to the issuance of an occupancy permit. The amount of transportation SDC due on deferred obligations shall be the amount in effect at the time of issuance of the occupancy permit.